

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
PACIFIC LIGHTNET, INC.)
Petition for Arbitration Pursuant)
to 47 U.S.C. § 252(b) of)
Interconnection Rates, Terms, and)
Conditions with Hawaiian)
Telcom, Inc.)
_____)

DOCKET NO. 03-0197

PROPOSED DECISION AND ORDER NO. 22851

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DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

Burlee K. Kane
for Chief Clerk of the Commission

ATTEST: A True Copy
for KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.
Burlee K. Kane

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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PACIFIC LIGHTNET, INC.) Docket No. 03-0197
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Petition for Arbitration Pursuant) Proposed Decision
to 47 U.S.C. § 252(b) of) and Order No. 22851
Interconnection Rates, Terms, and)
Conditions with Verizon)
Hawaii, Inc.)
_____)

PROPOSED DECISION AND ORDER

The commission issues this Proposed Decision and Order pursuant to Hawaii Revised Statutes ("HRS") § 91-11,¹ and in response to the Petition for Arbitration of Interconnection Rates, Terms, and Conditions ("Petition") filed by PACIFIC LIGHTNET, INC. ("PLNI") for arbitration of the rates, terms, and conditions for interconnection with VERIZON HAWAII, INC., now known as HAWAIIAN TELCOM, INC. ("Hawaiian Telcom").

¹HRS § 91-11 provides that

Whenever in a contested case the officials of the agency who are to render the final decision have not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision containing a statement of reasons and including determination of each issue of fact or law necessary to the proposed decision has been served upon the parties, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the officials who are to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

By this Proposed Decision and Order, the commission orders PLNI and Hawaiian Telcom² to incorporate the commission's resolution of each open issue as described in this Proposed Decision and Order into their interconnection agreement.

I.

Background

A.

Parties

PLNI, a Hawaii corporation, is a facilities-based competitive local exchange carrier ("CLEC") that competes with Hawaiian Telcom for switched services throughout the State of Hawaii ("State"). In addition, PLNI provides dedicated private line services, intrastate private line and switched services, including inter-island toll services in the State.

Hawaiian Telcom, originally chartered in 1883 under the Kingdom of Hawaii, is a Hawaii corporation and a public utility regulated by the commission under Hawaii Revised Statutes ("HRS") chapter 269. Hawaiian Telcom, an incumbent local exchange carrier ("ILEC") as defined by section 252 of the federal Telecommunications Act of 1996 (the "Act"), provides local and

²On March 16, 2005, the commission approved the merger transaction and other related matters described in the Application of Paradise Mergersub, Inc., now known as Hawaiian Telcom Communications, Inc.; GTE Corporation; Verizon Hawaii Inc. (upon completion of the merger transaction, "Hawaiian Telcom, Inc."); Bell Atlantic Communications, Inc., dba Verizon Long Distance; and Verizon Select Services Inc. The commission will in this Decision and Order refer to Verizon Hawaii, Inc. as Hawaiian Telcom, the name by which it is currently known.

intraLATA (Local Access and Transport Area ("LATA")) telecommunications services on a statewide basis in the State.

B.

Procedural History

On July 10, 2003, PLNI filed a Petition for Arbitration of Interconnection Rates, Terms, and Conditions with the commission for arbitration of the rates, terms, and conditions for interconnection with Verizon Hawaii Inc., now known as Hawaiian Telcom (PLNI and Hawaiian Telcom are collectively referred to as the "Parties"), pursuant to HAR §§ 6-80-6(2) and 6-80-53 and 47 U.S.C. § 252(b).³

On August 4, 2003, Hawaiian Telcom filed its response to PLNI's Petition, urging the commission to adopt Hawaiian Telcom's proposed language on the outstanding arbitration issues and reject PLNI's proposed alternative language.

On October 1, 2003, the Parties advised the commission that they settled Issue 2 and removed it from the list of issues to be addressed in this proceeding.

³PLNI served copies of the Petition on Hawaiian Telcom and the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). By Preliminary Statement of Position filed on August 11, 2003, the Consumer Advocate informed the commission that it will not participate in the instant docket, but requested that it continue to be served with copies of all documents filed with respect to this docket.

On October 15, 2003, Hawaiian Telcom filed a copy of the Amended, Extended, and Restated Agreement between PLNI and Hawaiian Telcom.

On December 8 and 9, 2003, the commission held a hearing to take evidence relating to this docket. By Order No. 20731, filed on January 6, 2004, the commission memorialized the agreement of the Parties, as approved by the commission, relating to the deadlines for the filing of the Parties' post-hearing briefs.

On January 12, 2004, Hawaiian Telcom and PLNI filed their respective opening post-hearing briefs (hereinafter referred to as "Post-hearing Brief of Hawaiian Telcom" and "PLNI's Post-hearing Brief," respectively), and on January 26, 2004, filed their respective post-hearing reply briefs (referred to as "Reply of Hawaiian Telcom" and "PLNI's Post-hearing Reply Brief," respectively).⁴ In the Parties' respective post-hearing briefs, they advised that due to their continuing settlement efforts, the initial list of twenty-four issues to be resolved by the commission has been reduced to twelve.

⁴On February 4, 2004, Hawaiian Telcom provided the commission with a copy of a Missouri decision to which PLNI cited in its posthearing brief, as well as the Georgia, New Jersey, Iowa, and Nevada decisions. On February 13, 2004, PLNI wrote to the commission to comment on the supplemental filing of Hawaiian Telcom on February 4, 2004.

II.

Discussion

A.

Standard of Review

Section 252(c) of the Act sets forth the standard of review to be used in arbitrations by the commission in resolving open issues and imposing conditions upon the Parties in the interconnection agreement.⁵ Pursuant to the Act and the commission's rules, the commission must ensure that any decision or condition meets the requirements of section 251 and accompanying Federal Communications Commission ("FCC") regulations; establish rates in accordance with section 252(d); and provide an implementation schedule.⁶ In resolving the issues in this arbitration, the commission will examine each issue and provide the specific contract language adopted by the commission.

B.

Issue 1

The Parties request guidance as to whether Verizon's web-based reference materials for CLECs should be incorporated by reference in the final interconnection agreement. Verizon maintains two informational websites for CLECs - the CLEC Guide, which covers the Verizon West (the former GTE operating territories) companies, and the CLEC Handbook, which covers the

⁵47 U.S.C. § 252(c).

⁶47 U.S.C. § 252(c)(1) - (3); HAR § 6-80-53.

Verizon East (the former Bell Atlantic operating territories) companies. Hawaiian Telcom states that both sites provide helpful general guidelines and information about doing business with it.

According to the Hawaii Supreme Court:

The mootness doctrine is said to encompass the circumstances that destroy the justiciability of a suit previously suitable for determination. Put another way, the suit must remain alive throughout the course of litigation to the moment of final appellate disposition. Its chief purpose is to assure that the adversary system, once set in operation, remains properly fueled. The doctrine seems appropriate where events subsequent to the judgment of the trial court have so affected the relations between the parties that the two conditions for justiciability relevant on appeal - adverse interest and effective remedy - have been compromised.

Wong v. Board of Regents, Univ. of Hawaii, 62 Haw. 391, 394, 616 P.2d 201, 203-204 (1980). Further, "[t]he duty and the inclination of courts, it is clear, are to decide actual controversies only and not 'to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.'" Anderson v. W.G. Rawley Co., 27 Haw. 150, 152 (1923) (quoting Murphy v. McKay, 26 Haw. 171, 173 (1921)).⁷

⁷See also Wong, 62 Haw. at 395, 616 P.2d at 204 ("[H]istorically the objection to decide moot cases was that the judgment of the court could not be carried into effect, or that relief was impossible to grant. Mootness was then a remedial issue related to the ability of the court to grant prospective relief").

In light of the merger transaction, which resulted in the cessation of Verizon's provision of telecommunications services as the ILEC in the State, the commission dismisses Issue 1 as moot.

C.

Issue 3

At issue is the time period for notice to PLNI by Hawaiian Telcom of a discontinuance in services. Hawaiian Telcom proposes that if, as a result of a change in the law, it is no longer required to provide services that the law currently requires it to provide (i.e., to CLECs), it should discontinue providing such services in accordance with the transition period contemplated by the order giving rise to the change in law. If the applicable order does not specify a transition period, Hawaiian Telcom proposes to give PLNI thirty days notice as its "Usual Notice Period." PLNI generally agrees with Hawaiian Telcom's proposal, but proposes additional contract language that would, for any service that is an "essential" element of a PLNI retail product, increase the time Hawaiian Telcom must continue providing the service by the amount of notice that PLNI must give its customers for discontinuance of its related retail service, plus thirty days (i.e., sixty additional days).

Hawaiian Telcom argues that PLNI's proposal should be rejected for several reasons. First, Hawaiian Telcom states that

PLNI's extra notice period would apply even if the order removing Hawaiian Telcom's obligation to provide a particular wholesale service gives PLNI ample time for notice to its retail customers.

Second, Hawaiian Telcom claims that the "essential element" trigger for PLNI's extra notice period is ambiguous and counterintuitive. Hawaiian Telcom is concerned that PLNI could and likely would claim that every element it uses to provide a retail service is essential to that service, such that the extra notice period would apply in every case. Hawaiian Telcom also believes that it is counterintuitive to apply an essential element trigger to any service a court or regulatory agency has deemed no longer need be provided.

Third, Hawaiian Telcom argues that PLNI's proposal would appear to permit Hawaii's administrative rules to override federal law, in cases where a federal order authorizes Hawaiian Telcom to terminate a service.

Finally, Hawaiian Telcom states that PLNI's proposed additional language "would require [Hawaiian Telcom] to continue providing service to PLNI for periods longer than it provides, or is required to provide, service to other CLECs."⁸

PLNI contends that Hawaiian Telcom "should give PLNI enough prior notice before discontinuing a service so that PLNI can first determine whether there are alternative means of

⁸Post-hearing Brief of Hawaiian Telcom at 8.

providing its end-user service, and, failing that, provide adequate notice to its end users consistent with HAR §§ 6-80-122 and 123."⁹ It requests that the commission obligate Hawaiian Telcom to provide PLNI "at least as much notice as PLNI is obligated to give its end users."¹⁰

PLNI likely will have enough notice of a discontinuance in service that is mandated by the commission, the FCC, or a court, since it does appear that such changes typically occur at a "measured pace" as suggested by Hawaiian Telcom, and with great public involvement or knowledge. However, the commission also recognizes that PLNI may not have adequate time to provide its customers with notice of discontinuance of its service (if it chose to discontinue rather than attempt to procure another provider of the service) in those instances when a change occurs after little or no public involvement. Thus, instead of providing thirty days as its "Usual Notice Period," the commission instead will require that Hawaiian Telcom provide PLNI with forty-five days of notice.

With respect to Issue 3, and in accordance with the foregoing discussion, the commission adopts the following language:

⁹PLNI's Post-hearing Brief at 5.

¹⁰PLNI's Post-hearing Reply Brief at 2.

4.7 Hawaiian Telcom will provide forty-five (45) days prior written notice to PLNI of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.

D.

Issue 4

Hawaiian Telcom and PLNI disagree on the appropriate amount of a letter of credit that would be required to allow PLNI to continue to receive services from Hawaiian Telcom to protect Hawaiian Telcom from "becoming an involuntary creditor" if PLNI demonstrated financial instability.¹¹ PLNI argues that when it fails to pay on an individual account, the amount of the letter of credit should be calculated only on the basis of that account. Hawaiian Telcom suggests that a letter of credit equal to two months of anticipated charges on all PLNI accounts is reasonable and adequate assurance for Hawaiian Telcom to be able to continue providing services to PLNI, and for PLNI to continue providing service to its customers.

PLNI contends that there have been instances in the recent past in which Hawaiian Telcom has, because of billing errors on Hawaiian Telcom's part, erroneously suggested that PLNI was delinquent on its billing account numbers ("BANs").

¹¹Post-hearing Brief of Hawaiian Telcom at 9.

PLNI suggests that it will have to provide a financial institution with 100 percent collateral in order to obtain a letter of credit in the amount required by the agreement. As a result, it is concerned about the potential adverse impact on the operations of the company, even for relatively minor past due amounts.

Hawaiian Telcom argues that it has the right to assure the recovery of the entire amount owed to it, particularly if PLNI becomes financially unstable.

While Hawaiian Telcom should be allowed to receive payment for the services it is required to provide to PLNI when there are credible signs of financial distress, PLNI's operations should not be jeopardized if the past due period and delinquent payments are de minimis. Accordingly, the commission will adopt Hawaiian Telcom's proposed language for the provision in dispute, but will provide PLNI with additional time by which to supply Hawaiian Telcom with the assurance of payment and provide either Party with the ability to require the commission's approval of the requested amounts.

With respect to Issue 4, and in accordance with the foregoing discussion, the commission adopts the following language:

6.1 Upon request by Hawaiian Telcom, PLNI shall, at any time and from time to time with thirty (30) days prior notice to PLNI and the Commission,

provide to Hawaiian Telcom adequate assurance of payment of amounts due (or to become due) to Hawaiian Telcom hereunder, which shall require the approval of the Commission if requested by either Hawaiian Telcom or PLNI.

6.3 The letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-recurring charges), as reasonably determined by Hawaiian Telcom, for the Services to be provided by Hawaiian Telcom to PLNI in connection with this Agreement...

E.

Issue 7

The Act requires telephone companies to "interconnect" with each other so that the companies' customers may call one another.¹² The location(s) at which two companies connect their networks are known as "Point(s) of Interconnection" or "POI(s)." Although the FCC's rules permit a CLEC to designate one or more POIs per Local Access and Transport Area ("LATA"), those POIs must be on the ILEC's network.¹³ Hawaiian Telcom proposes that PLNI may designate one, or as many as it may choose, technically feasible POIs, so long as they are on Hawaiian Telcom's network and are for the mutual exchange of traffic. Hawaiian Telcom proposes that at the outset of the agreement the POIs should be

¹²See 47 U.S.C. § 251(a)(1).

¹³47 U.S.C. § 251(c)(2).

those that the Parties are using to exchange traffic as of the agreement's effective date.

PLNI proposes that the Parties establish at least two POIs - one on Hawaiian Telcom's network for delivery of PLNI's traffic, and one on PLNI's network for delivery of Hawaiian Telcom's traffic at PLNI's Honolulu switch.

The Act, the FCC's rules, and the Parties' proposed agreement and attachment provisions, require Hawaiian Telcom to allow PLNI to interconnect with its system at technically feasible points within Hawaiian Telcom's network.¹⁴ PLNI's proposed language suggests that the default POI for Hawaiian Telcom's traffic be "at PLNI's Honolulu tandem,"¹⁵ a point, which is not on the incumbent's system. The provisions contained within Hawaiian Telcom's proposed language do not, as PLNI suggests, mandate multiple POIs, but allow for the Parties to change the existing POIs on the various islands. Accordingly, the commission adopts the language suggested by Hawaiian Telcom for the agreement and attachments to the agreement with respect to this issue.

With respect to Issue 7, and in accordance with the foregoing discussion, the commission adopts the following language:

¹⁴47 U.S.C. § 251(c)(2)(B) and 47 C.F.R. § 51.305(a).

¹⁵PLNI Petition at 15.

Glossary 2.71

POI (Point of Interconnection). The physical location where the Parties' respective facilities physically interconnect for the purpose of mutually exchanging their traffic. As set forth in the Interconnection Attachment, a Point of Interconnection shall be at (i) a technically feasible point on Hawaiian Telcom's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement. By way of example, a technically feasible Point of Interconnection on Hawaiian Telcom's network in a LATA would include an applicable Hawaiian Telcom Tandem Wire Center or Hawaiian Telcom End Office Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a PLNI Wire Center, PLNI switch or any portion of a transport facility provided by Hawaiian Telcom to PLNI or another party between (x) a Hawaiian Telcom Wire Center or switch and (y) the Wire Center or switch of PLNI or another party.

Interconnection Attachment § 1.0

Each Party shall provide to the other Party, in accordance with this Agreement, but only to the extent required by Applicable Law, interconnection at (i) any technically feasible Point(s) of Interconnection on Hawaiian Telcom's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement, for the transmission and routing of Telephone Exchange Service and Exchange Access. By way of example, a technically feasible Point of Interconnection on Hawaiian Telcom's network in a LATA would include an applicable Hawaiian Telcom Tandem Wire Center or Hawaiian Telcom End Office Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a PLNI Wire Center, PLNI switch or any portion of a transport facility provided by Hawaiian Telcom to PLNI or another party between (x) a Hawaiian Telcom Wire Center or switch and (y) the Wire Center or switch of PLNI or another party. For brevity's sake, the foregoing examples of locations that, respectively, are and are not "on Hawaiian Telcom's network" shall apply (and

are hereby incorporated by reference) each time the term "on Hawaiian Telcom's network" is used in this Agreement.

Interconnection Attachment 2.1

Each Party, at its own expense, shall provide transport facilities to the technically feasible Point(s) of Interconnection on Hawaiian Telcom's network in a LATA selected by PLNI.

2.1.1 Point(s) of Interconnection as of the Effective Date. The Parties agree that, in consideration of their Interconnection architecture that exists as of the Effective Date, the technically feasible Point(s) of Interconnection (POIs) in the LATA for the transmission and routing of Telephone Exchange service and Exchange Access established in accordance with this Agreement as of the Effective Date shall be the Hawaiian Telcom locations identified in Schedule 2.1.1, until such time as the Parties may establish other POI(s) in accordance with this Agreement. For the avoidance of doubt, PLNI shall pay Hawaiian Telcom, at the rates provided for in the Pricing Attachment, for any Collocation related Services that Hawaiian Telcom provides to PLNI at the locations identified in Schedule 2.1.1.

Schedule 2.1.1

**POINT(S) OF INTERCONNECTION AS OF THE EFFECTIVE DATE
PURSUANT TO SECTION 2.1.1 OF THE AGREEMENT**

LATA	POI SITE	CLLI CODE
834	Kawaihae 62-3440 Queen Kaahumanu Hwy. Kamuela, HI 96743 Island of Hawaii	KHAEHICO
834	Lihue 4444 Rice Street Lihue, HI 96766 Island of Kauai	LHUEHIMN

834	Kihei 210 Halona Street Kihei, HI 96753 Island of Maui	KIHEHICO
834	Honolulu Tandem 1177 Bishop Street Honolulu, HI 96813 Island of Oahu	HNLLHIMN
834	Laie 55-048 Lanihuli Street Laie, HI 96762 Island of Oahu	LAIEHICO
834	Waikiki 220 Kapuni Street Honolulu, HI 96815 Island of Oahu	WKKIHICO
834	Punahou 2054 Young Street Honolulu, HI 96826 Island of Oahu	PNHOHICO
834	Kaunakakai 30 Kamehameha V Hwy. Kaunakakai, HI 96748 Island of Molokai	KKAIHIMN
834	Lanai City 423 Ninth Street Lanai City, HI 96763 Island of Lanai	LNCYHIMN

F.

Issue 9

When two parties provision the facilities necessary to directly exchange circuit-switched voice communications between them, they do so via the establishment of trunk groups, which may be either one-way or two-way. After establishing trunk groups, either party may request conversion of one-way groups to two-ways or vice versa. Hawaiian Telcom proposes that when such

a request is made, the party who requests the conversion should be responsible for 100 percent of the costs associated with converting the trunks. PLNI proposes that since Hawaiian Telcom controls how facilities are provisioned on its network that the cost of the trunk conversion requests be shared between the interconnecting carriers on an equitable, cost-based basis.

The commission believes that it is reasonable to attribute the costs of such conversions to the cost-causer, and concludes that Hawaiian Telcom's proposed language, as amended below, should be adopted with respect to this issue.

With respect to Issue 9, and in accordance with the foregoing discussion, the commission adopts the following language:

In accordance with the terms of this Agreement, PLNI may designate (to the extent Applicable Law requires Hawaiian Telcom to allow PLNI to designate) where the Parties will deploy One-Way Interconnection Trunks (trunks with traffic going in one direction, including one-way trunks and uni-directional two-way trunks) and/or Two-Way Interconnection Trunks (trunks with traffic going in both directions). Without limiting the application of any other charges that may apply under this Agreement (e.g., charges applicable to new installations of trunk groups), in the event PLNI requests that any one-way trunk groups be converted to two-way groups, or that any two-way trunk groups be converted to one-way trunk groups, PLNI shall pay Hawaiian Telcom ~~any~~ all reasonable applicable charges incurred to implement the requested conversion.

G.

Issue 10

Hawaiian Telcom's proposed section 2.5 of the Interconnection Attachment allows the Parties to change their existing network interconnection arrangements, and requires the party requesting the changes to be responsible for the costs of that change. PLNI requests that the commission amend Hawaiian Telcom's proposal to allow the Parties to establish an equitable, cost-based basis for allocating the costs of amending the interconnection arrangements. In particular, PLNI suggests that the commission strike Hawaiian Telcom's proposed language requiring the "requesting party," which PLNI states will always require PLNI, pursuant to federal law, to pay all costs associated with modifying the interconnection arrangement.¹⁶

PLNI asserts that it should not bear the costs on Hawaiian Telcom's side of the POI if PLNI exercises its right to establish a single POI in a LATA. PLNI further contends that it "has no say and wants no say in how [Hawaiian Telcom] decides to configure its network on its side of the POI. But [Hawaiian Telcom] continues to insist that PLNI pay for costs that [Hawaiian Telcom] solely determines and controls."¹⁷

¹⁶PLNI's Post-hearing Brief at 14.

¹⁷PLNI's Post-hearing Reply Brief at 9.

PLNI concludes that Hawaiian Telcom should share the costs of any network rearrangements PLNI elects to undertake.

At the outset, Hawaiian Telcom argues that PLNI waived any objection to this provision when its Petition failed to identify any specific area of disagreement. It further states that if the commission is inclined to consider PLNI's requests on the merits, the commission should find that Section 251(d)(1) of the Act requires that, at a minimum, Hawaiian Telcom be compensated for its costs resulting from a CLEC's interconnection requests. Hawaiian Telcom states that PLNI, not Hawaiian Telcom will control the activities Hawaiian Telcom must perform to satisfy PLNI's requests. Hawaiian Telcom also states that by assigning costs to the carrier that requested and will benefit from the particular activities, its proposal ensures that the benefiting party's services will reflect the underlying costs of those activities.

The commission agrees that the amendments to the interconnection arrangements generally will be at the request and to the benefit of PLNI. The Act allows Hawaiian Telcom to recover costs that are associated with interconnection arrangements requested by CLECs. Accordingly, Hawaiian Telcom should be allowed to recover the costs incurred as a result of PLNI's interconnection requests, provided that Hawaiian Telcom submits a detailed and complete accounting of these costs to

PLNI. The commission will adopt Hawaiian Telcom's proposed language, as amended below, in this instance.

With respect to Issue 10, and in accordance with the foregoing discussion, the commission adopts the following language:

2.5 Transition to New Interconnection Arrangements.

2.5.1 To the extent this Agreement entitles either Party to require the conversion from an Interconnection arrangement or method implemented pursuant to this Agreement or the interconnection agreement(s) that preceded this Agreement ("Existing Interconnection Arrangement") to a new Interconnection arrangement or method made available pursuant to this Agreement ("New Interconnection Arrangement"), including, but not limited to, PLNI's establishment of any new POI(s) not identified in Schedule 2.1.1, conversion from two-way trunks to one-way trunks, or conversion from one-way trunks to two-way trunks, the Parties agree that the following provisions shall apply to any such conversion:

2.5.1.1 The Parties will mutually develop a commercially reasonable transition plan for each LATA that will include, but not be limited to: (1) two-way trunk groups that the Parties intend to transition to one-way trunk groups, or one-way trunk groups that the Parties intend to transition to two-way trunk groups, if applicable; (2) each Party's plans for implementing any other New Interconnection Arrangement pursuant to this Agreement; (3) each technically feasible Point(s) of Interconnection on Hawaiian Telcom's network in each LATA, and (4) any other reasonable terms and conditions (including, without limitation, applicable recurring and non-recurring charges to be assessed by either Party) necessary to Implement the transition plan. The Parties shall agree

upon the sequence and timeframes for the transition of Existing Interconnection Arrangements to the New Interconnection Arrangements and any special ordering and implementation procedures to be used for such transition.

2.5.1.2 Unless otherwise agreed to by the Parties as part of the transition plan established pursuant to Section 0 of this Attachment, and except as set forth in Section 0 of this Attachment, the Party requesting transition to a New Interconnection Arrangement under this Agreement (for purposes of this Section 0, the "Requesting Party") shall pay to the other Party ~~any~~ all reasonable applicable non-recurring or other one-time charges for any Services provided by the other Party in connection with the conversion from an Existing Interconnection Arrangement to a New Interconnection Arrangement available under this Agreement (for purposes of this Section 0, "Conversion Charges"), and the Requesting Party shall not charge the other Party for any such Conversion Charges. The Requesting Party shall be provided with a complete and detailed accounting of the underlying costs associated with these charges by the other Party. For the avoidance of doubt, and without limiting PLNI's obligation as a Requesting Party under this Section 0, PLNI shall not charge Hawaiian Telcom any Conversion Charges to transition Interconnection Arrangements from the POIs identified in Schedule 2.1.1 to any new POI(s) that PLNI may establish pursuant to this Agreement.

2.5.1.3 Notwithstanding Section 2.5.1.2 of this Attachment, Hawaiian Telcom shall not be considered a Requesting Party with respect to any network change, reconfiguration, or conversion that Hawaiian Telcom implements: (a) to comply with any regulatory, legislative, judicial, or other governmental requirement or standard,

including, but not limited to, any change, reconfiguration, or conversion that Hawaiian Telcom implements to comply with public safety or national security requirements or standards, or (b) to satisfy any obligations it may have as a carrier of last resort or as an incumbent Local Exchange Carrier under Section 251(c) of the Act, including, but not limited to, installation of any new tandem switch(es) that Hawaiian Telcom may determine to be necessary to address tandem exhaust (collectively, "Non-Optional Changes"). Accordingly, to the extent implementation of a Non-Optional Change requires a change in or reconfiguration or conversion of an Existing Interconnection Arrangement, PLNI shall not charge Hawaiian Telcom any Conversion Charges.

2.5.1.4 Nothing in this Section 0 shall limit the application of any charges other than Conversion Charges that otherwise apply to any Service provided under this Agreement, including, but not limited to, applicable recurring charges.

H.

Issue 11

The Parties disagree as to whether Virtual Foreign Exchange ("VFX") traffic should be included in the definition of reciprocal compensation traffic. Hawaiian Telcom's interconnection attachments state that reciprocal compensation shall not apply to VFX traffic. PLNI requests that the commission adopt PLNI's proposed language to ensure that both non-Internet Service Provider-bound ("ISP")

FX and VFX traffic continue to be considered subject to reciprocal compensation.

Hawaiian Telcom contends that PLNI's proposal is contrary to law because access charges, not reciprocal compensation apply to interexchange calls. It states that Section 251(b)(5) of the Act and the FCC's implementing rules provide that reciprocal compensation applies only to calls that begin and end in a single local exchange area, and do not apply to "interstate or intrastate access, information access, or exchange services for such access."¹⁸ Hawaiian Telcom argues that PLNI's proposal applies the wrong intercarrier compensation regime to calls placed to its multi-NXX customers. It suggests that calls to "virtual" telephone numbers that appear local to the caller but in fact travel from one exchange area to another be treated just like other interexchange calls for intercarrier compensation purposes. Hawaiian Telcom cautions that PLNI's proposal could "seriously affect" its ability to continue providing affordable telephone service throughout the State of Hawaii.

PLNI contends that customers would be confused if some calls to a given telephone number (NPA-NXX) were treated as local, while other calls to the same NPA-NXX were treated as toll. PLNI asserts that Hawaiian Telcom's claim that PLNI's

¹⁸Post-hearing Brief of Hawaiian Telcom at 37.

proposal could affect Hawaiian Telcom's ability to continue providing affordable telephone service throughout the State is "without any factual or legal support whatsoever."¹⁹ Instead, PLNI claims that adopting Hawaiian Telcom's access charge proposal "would force PLNI out of the VFX market - leaving [Hawaiian Telcom] once again in the position of maintaining a statewide monopoly with respect to its FX and VFX services."²⁰

The commission is persuaded by PLNI's arguments in favor of the Parties continuing to pay reciprocal compensation for FX and VFX traffic. In particular, the commission is concerned that customers will be confused and unable to determine when they will be charged a "toll" call if the current compensation plan is amended. Accordingly, the commission will adopt PLNI's proposed language for this issue.

With respect to Issue 11, and in accordance with the foregoing discussion, the commission adopts the following language:

Glossary § 2.80

... Reciprocal Compensation Traffic does not include the following traffic (it being understood that certain traffic types will fall into more than one (1) of the categories below that do not constitute Reciprocal Compensation Traffic): ... or, (8) Virtual Foreign Exchange

¹⁹PLNI's Post-hearing Reply Brief at 11.

²⁰PLNI's Post-hearing Reply Brief at 12.

Traffic (or V/FX Traffic) (as defined in the Interconnection Attachment)...

Interconnection Attachment § 6.1

... the Parties agree to use CPN information as follows:....

Interconnection Attachment § 7.2.1

Reciprocal Compensation shall not apply to interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access.

I.

Issue 12

PLNI seeks firm intervals for Hawaiian Telcom's provisioning of Unbundled Network Elements ("UNEs") and assurance that Hawaiian Telcom provides PLNI with the same provisioning intervals it provides itself. PLNI indicates that Hawaiian Telcom is presently able to give CLECs such firm intervals in Verizon East serving areas, but not in the Verizon West territory. To this end, PLNI requests that the commission order Hawaiian Telcom to establish defined provisioning timeframes and to file a report with the commission and PLNI that identifies, for each UNE, the average number of days it took Hawaiian Telcom to provision orders for itself.

Hawaiian Telcom argues that there is no legal support for PLNI's proposal as the Act simply requires that Hawaiian Telcom provide CLECs with access to UNEs on a nondiscriminatory basis, which Hawaiian Telcom maintains it

does. It explains that the Verizon East provisioning system highlighted by PLNI differs from the Verizon West system in that the Verizon East system provides specific provisioning intervals while the Verizon West system determines next available dates upon which orders can be provisioned using an algorithmic calculation that takes into account force loading and system demands. Regardless of this difference, Hawaiian Telcom claims both provisioning systems are nondiscriminatory, and therefore, in compliance with the Act in that the same provisioning procedures apply to wholesale and retail customers in any given service area.

Hawaiian Telcom states that satisfying PLNI's desire in this instance would mean replacing Hawaiian Telcom's provisioning system with the Verizon East system. This would require replacing the entire provisioning system that serves the Verizon West footprint, which Hawaiian Telcom claims would be prohibitively expensive. Hawaiian Telcom also notes the availability of the commission-approved Change Management Process, through which Hawaiian Telcom and dissatisfied CLECs can work together to evaluate changes to existing practices and procedures.

Based upon the information and arguments presented, PLNI's proposal is not justified. PLNI has not provided evidence that the Verizon West provisioning system that serves

Hawaii is faulty, inadequate, or discriminatory to PLNI. Furthermore, considering the substantial financial and operational impact PLNI's proposal would cause Hawaiian Telcom, the commission finds PLNI's proposal to be unreasonable.

With respect to Issue 12, and in accordance with the foregoing discussion, the commission rejects PLNI's proposed additional language labeled as section 1.8.

J.

Issue 13

PLNI requested it be allowed to perform its own cross-connect functions between PLNI's termination block and Hawaiian Telcom's termination block, because it is concerned that Hawaiian Telcom's time and materials charges for performing such tasks could become prohibitively expensive and it would be charged for Hawaiian Telcom's time to update records and "clean up" equipment rooms. Alternatively, PLNI sought to limit the amount of time Hawaiian Telcom may assess for performing cross-connect functions to forty-five minutes.

Hawaiian Telcom argues that PLNI personnel should not be permitted to perform the requested cross-connect activities because, among other reasons, those activities occur on Hawaiian Telcom's network, hampering its ability to ensure the security and reliability of the network. Hawaiian Telcom

asserts that PLNI's speculation that Hawaiian Telcom might unjustifiably increase its cross-connect charges in the future is unfounded and that there is no reason to change its existing practice of charging for cross-connect activities at its current time and materials rates when PLNI has not identified problems with these practices. Hawaiian Telcom asserts that no CLECs are charged for its maintenance and cleaning of its facilities.

There does not appear to be sufficient evidence in the record to limit Hawaiian Telcom's cross-connect fees. PLNI merely expressed apprehension that Hawaiian Telcom could charge it "unlimited" fees for time and materials for such functions. Hawaiian Telcom clarified that any time spent to tidy equipment rooms would be charged to a maintenance account. Accordingly, the commission rejects PLNI's additional language set forth in Exhibit A to its Petition, rejects PLNI's proposal for a limit on the cross-connect fees, and prohibits Hawaiian Telcom from charging any time for maintaining and cleaning equipment rooms when fulfilling cross-connect requests to PLNI.

With respect to Issue 13, and in accordance with the foregoing discussion, the commission adopts the following language:

7.1 House and Riser

Subject to the conditions set forth in Section 1 of this Attachment and upon request by PLNI, Hawaiian Telcom shall provide to PLNI access to a House and Riser Cable in accordance with this Section 7 and the rates and charges provided in the Pricing Attachment, provided that any time spent by Hawaiian Telcom maintaining or cleaning the said House and Riser Cable shall not be charged to PLNI as access to the said House and Riser Cable...

7.3 PLNI must ensure that its terminal block has been tested for proper installation, numbering and operation before ordering from Hawaiian Telcom access to a House and Riser Cable. Hawaiian Telcom shall perform cutover of a Customer to PLNI service by means of a House and Riser Cable subject to a negotiated interval. Hawaiian Telcom shall install a jumper cable to connect the appropriate Hawaiian Telcom House and Riser Cable pair to PLNI's termination block, and Hawaiian Telcom shall determine how to perform such installation. PLNI shall coordinate with Hawaiian Telcom to ensure that House and Riser Cable facilities are converted to PLNI in accordance with PLNI's order for such services.

K.

Issue 20

Hawaiian Telcom's Proposed Pricing Attachment establishes the sources for the rates Hawaiian Telcom charges PLNI for UNEs. Tariff rates, if they exist, are utilized. If no tariffed rate is available, then the Parties would look to the following documents or guidelines in the following order for guidance: 1) the rates listed in Appendix A to the Pricing Attachment; 2) later-filed tariffs; 3) a rate expressly provided

for elsewhere in the agreement; 4) an FCC- or commission-approved charge; and 5) a charge mutually agreed to by the Parties in writing. PLNI argues that later-filed tariffs should not supersede the rates listed in Appendix A to the Pricing Attachment unless the Parties consent in writing or the commission or FCC affirmatively orders it. PLNI is concerned that it would have no sure way of knowing whether Hawaiian Telcom intended a particular tariff filing to supersede PLNI's agreement rate until after the tariff becomes effective, at which point PLNI would no longer have an opportunity to intervene or provide comments on the tariff application. PLNI requests to be served notice of all tariff filings that may affect agreement rates.

Hawaiian Telcom argues that PLNI is seeking special, discriminatory treatment by seeking to be exempted from changes in Hawaiian Telcom's tariff rates and that PLNI desires the power to selectively freeze current prices, which creates an arbitrage opportunity. Hawaiian Telcom states that the commission's rules do not require it to serve notice of tariff filings on affected CLECs. It further asserts that attending to tariff filings is part of a carrier's normal cost of doing business.

Monitoring new tariff filings is a local exchange carrier's cost of doing business. It is a part of the

activities in which a local exchange carrier must engage in to monitor its competition and compete effectively in its marketplace. Thus, PLNI's request for notification of tariffs that may affect it is rejected. Hawaiian Telcom's argument that PLNI's proposal leads to a potential for arbitrage is convincing. Allowing PLNI to pick and choose the rates applicable to it or to effectively freeze the agreement rates is unfair and may impede efficient pricing in the marketplace. Therefore, the commission also rejects PLNI's proposed language limiting subsequent tariff rates from superseding the agreement rates unless the Parties consent or the FCC or Commission orders it.

With respect to Issue 20, and in accordance with the foregoing discussion, the commission adopts the following language:

1.3 The Charges for Service shall be the Charges for the Service stated in the Providing Party's applicable Tariff.

1.5 The Charges stated in the Appendix A of this Pricing Attachment shall be automatically superseded by an applicable Tariff Charges...

L.

Issue 21

PLNI seeks to modify Hawaiian Telcom's proposed language that currently prohibits PLNI from charging

Hawaiian Telcom more than Hawaiian Telcom would charge PLNI for a particular service unless PLNI can show that its costs for providing that service are higher than Hawaiian Telcom's costs. PLNI requests that the commission allow it to set rates applicable to Hawaiian Telcom in a manner consistent with PLNI's tariffs. While PLNI notes that this issue is hypothetical as it is unaware of any instance where its prices are higher than those of Hawaiian Telcom, it nevertheless argues that the template language introduces a burden on PLNI if it is to follow non-discriminatory pricing practices, in that Hawaiian Telcom's rates would serve as a price limit on its services to all its customers.

Hawaiian Telcom argues that because the commission approved its rates under rules that require noncompetitive service rates to be cost-based and just and reasonable, it is reasonable to use those same rates for comparable services offered by PLNI. Similarly, when there are no commission-approved rates for a comparable Hawaiian Telcom service, but there are FCC rates, Hawaiian Telcom would use the FCC rates for comparable services offered by PLNI unless PLNI can justify a higher rate. Hawaiian Telcom contends that since PLNI and other CLECs are not required to provide cost-study support for their tariffed rates, there is no assurance that PLNI's tariffed rates would reflect its underlying costs.

The commission scrutinizes the various rates Hawaiian Telcom charges for noncompetitive services under rules that require those charges to be cost-based and just and reasonable. To ensure that not only Hawaiian Telcom's rates, but PLNI's rates are also reasonable and cost-based, it is appropriate to allow PLNI to assess a higher rate than Hawaiian Telcom's rate for a comparable service, only if it is able to justify those rates by providing cost data. Accordingly, the commission will adopt Hawaiian Telcom's proposal in this instance.

With respect to Issue 21, and in accordance with the foregoing discussion, we adopt the following language:

3. Notwithstanding any other provision of this Agreement, the Charges that PLNI bills Hawaiian Telcom for PLNI's Services shall not exceed the Charges for Hawaiian Telcom's comparable Services, except to the extent that PLNI's costs to provide such PLNI's Services to Hawaiian Telcom exceeds the Charges for Hawaiian Telcom's comparable Services and PLNI has demonstrated such cost to Hawaiian Telcom, or, at Hawaiian Telcom's request, to the Commission or the FCC.

M.

Issue 23

PLNI contends that it should not be charged for any one component of a UNE combination until the entire combination has been provisioned. In the alternative, PLNI requests that

the commission prohibit Hawaiian Telcom from beginning to bill for loop/transport combinations until the transport and at least one subtending loop has been provisioned.

PLNI states that Hawaiian Telcom's proposed agreement does not provide it with any assurance that a loop will be provisioned within any particular timeframe following the provisioning of the transport. Moreover, PLNI asserts that Hawaiian Telcom has no incentive to install the loop in a timely manner as it will receive compensation whether or not the ordered service is usable. It further claims that in the Verizon East territory, Verizon has committed to not begin billing CLECs for loop/transport combinations until the transport and at least one subtending loop are provisioned.

Hawaiian Telcom argues that PLNI's proposal should be rejected because it is contrary to law and sound policy. It maintains that its approach to billing for UNE combinations is consistent with the Act and FCC rules that specify that UNE prices be cost-based and that the ILEC is entitled to recover its costs.

While both Parties raise sound arguments in support of their respective requests, the commission is persuaded by PLNI's concern that the provisioning and billing arrangement as proposed by Hawaiian Telcom does not offer any assurance that the entire UNE combination will be provided in a timely fashion

and by its claim that withholding payment until the provisioning of the transport and at least one subtending loop gives Hawaiian Telcom an incentive to fulfill the request in a manner that maximizes coordination and efficiency. Thus, the commission rejects PLNI's originally proposed language, as presented in its Petition, and adopts PLNI's alternative proposal, as described in its post-hearing brief.

With respect to Issue 23, and in accordance with the foregoing discussion, the commission adopts the following language, which the commission recognizes may need to be altered to conform to the definitions set forth within the agreement:

16.2 PLNI will not be assessed rates for Network Elements ordered in Combination until the transport and at least one subtending loop have been provisioned as a Combination.

In sum, the commission finds that the terms and conditions discussed in the preceding sections of this decision and order should be adopted. The commission further concludes that they meet the requirements of the Act, the regulations of the FCC, and the commission's rules relating to competition in telecommunications services.

III.

Orders

THE COMMISSION ORDERS:

1. Hawaiian Telcom and PLNI shall incorporate the commission's resolution of each open issue as described in this Proposed Decision and Order into their interconnection agreement and provide a draft of their conformed interconnection agreement to the commission and the Consumer Advocate within thirty days of the date of this Proposed Decision and Order.

2. Consistent with HRS § 91-11 and HAR § 6-61-120, the Parties shall notify the commission as to whether it accepts, in toto, the Proposed Decision and Order, or does not accept, in whole or in part, the Proposed Decision and Order within ten (10) days of the date of this Proposed Decision and Order.²¹ A party's objection or non-acceptance shall be based on the evidence and information contained in the current docket record.

²¹This deadline is consistent with the deadline to move for reconsideration of a commission decision and order. See HAR §§ 6-61-21(e) (two days added to the prescribed period for service by mail), 6-61-22 (computation of time), and 6-61-137 (ten day deadline, motion for reconsideration).

DONE at Honolulu, Hawaii

SEP 14 2006

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Catherine P. Awakuni
Catherine P. Awakuni
Commission Counsel

03-0197.eh.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Proposed Decision and Order No. 22851 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: SEP 14 2006